

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CROWN PAPER LIQUIDATING TRUST,

No. 02-3836 MMC

Plaintiff,

v.

PRICEWATERHOUSECOOPERS LLP f/k/a
COOPERS & LYBRAND, et al.,

Defendants

**ORDER DENYING PLAINTIFF'S MOTION
TO STAY ENFORCEMENT OF
ATTORNEY'S FEES AWARDS AND
REQUEST FOR REDUCTION OF
SUPERSEDEAS BOND OR, IN THE
ALTERNATIVE, FOR ORDER
PERMITTING TRUST TO BE ADVANCED
MONEY**

On March 30, 2005, the Court granted defendant Houlihan Lokey Howard & Zukin's ("Houlihan") motion for an award of attorney's fees, and awarded Houlihan fees and non-taxable costs in the total amount of \$480,385.43. Additionally, on March 30, 2005, the Court granted defendant Credit Suisse First Boston LLC's ("Credit Suisse") motion for an award of attorney's fees, and awarded Credit Suisse fees and non-taxable costs in the total amount of \$824,913. On April 22, 2005, plaintiff filed a notice of appeal from the above-referenced orders, and such appeal is pending before the Ninth Circuit.

Before the Court is plaintiff's motion, pursuant to Rule 62(d), to stay enforcement of the above-referenced orders pending appeal, upon the posting of a bond in a reduced amount. Alternatively, and in the event the Court finds a reduction of the bond amount is not appropriate, plaintiff requests that its counsel either be allowed to pay the attorney's

1 fees awards or to advance plaintiff the funds necessary to obtain a supersedeas bond in
2 the amount of those awards. Houlihan and Credit Suisse have filed a joint opposition, in
3 which they state they do not oppose the Court's granting permission to plaintiff's counsel to
4 advance plaintiff the funds necessary to pay the attorney's fees awards, but that they do
5 oppose the other forms of relief sought by plaintiff. Plaintiff did not file a reply.

6 **I. Reduction of Bond Requirement**

7 Plaintiff seeks an order staying enforcement of the judgments upon plaintiff's posting
8 of a bond in the amount of \$50,000, rather than a bond in the amount of the judgments,
9 which total \$1,305,298.43. Plaintiff argues, inter alia, that it should not be required to post
10 a supersedeas bond in the amount of the judgments because such undertaking would
11 interfere with its plans to pay other creditors. In that regard, plaintiff does not argue it
12 would be financially impossible for it to pay the judgments, only that other creditors, in
13 plaintiff's view, should be paid before Houlihan and Credit Suisse.

14 An appellant is not entitled to a stay of a monetary judgment pending appeal in the
15 absence of a showing that the appellee would be protected in the event the appeal is
16 unsuccessful. See In re Carlson, 224 F. 3d 716, 719 (7th Cir. 2000) (holding district court
17 has discretion under Rule 62(d) to waive requirement that appellant post bond in amount of
18 judgment, but "only if the appellant has a clearly demonstrated ability to satisfy the
19 judgment in the event the appeal is unsuccessful and there is no other concern that the
20 appellee's rights will be compromised by a failure adequately to secure the judgment"); see,
21 e.g., Miami Int'l Realty Co. v. Pavnter, 807 F. 2d 871, 874 (10th Cir. 1986) (holding district
22 court did not err in granting stay without requiring appellant to post supersedeas bond in full
23 amount of judgment, where district court froze appellant's assets and ordered appellant's
24 insurance coverage escrowed pending stay). Here, as noted, plaintiff seeks to avoid
25 having to post a bond in the amount of the judgments, or to otherwise secure its obligations
26 to Houlihan and Credit Suisse, so that, essentially, it is free to pay other creditors.

27 Because plaintiff has not shown that Houlihan and Credit Suisse would be protected
28 in the event plaintiff does not prevail on appeal, the Court declines to exercise its discretion

1 to grant a stay upon the posting of a bond in the amount of \$50,000.

2 **II. Advance of Costs By Counsel**

3 Plaintiff alternatively requests that the Court allow one of its counsel, Beus Gilbert,
4 LLC ("Beus Gilbert"), to advance plaintiff either the amount necessary to pay the judgments
5 or to post a supersedeas bond in the amount of the judgments.

6 In support of its alternative request, plaintiff offers a declaration from a Beus Gilbert
7 partner, Leo R. Beus ("Beus"), who states Beus Gilbert is willing to advance the necessary
8 funds to plaintiff, and that plaintiff then will be obliged to repay the funds under the terms of
9 the Representation Agreement between plaintiff and Beus Gilbert. (See Beus Decl., filed
10 June 1, 2005, ¶¶ 7, 8.) According to Beus, the Bankruptcy Court, in the Crown bankruptcy
11 proceedings, approved plaintiff's engagement of Beus Gilbert and that, "[i]n doing so, the
12 Bankruptcy Court had before it the Representation Agreement." (See id. ¶ 6.) The
13 Representation Agreement provides that, irrespective of whether plaintiff prevails on its
14 claims, plaintiff is obliged to pay Beus Gilbert the costs and expenses advanced on
15 plaintiff's behalf. (See id. Ex. 1 ¶ 2.1.)

16 In the proceedings before the Bankruptcy Court, plaintiff represented that under the
17 terms of the bankruptcy plan approved by the Bankruptcy Court, plaintiff is obligated to pay
18 creditors according to the terms of that plan. Because plaintiff now seeks to become
19 obligated to Beus Gilbert for an additional, and sizable, sum, this Court's approval of
20 plaintiff's alternative request could have unintended consequences with respect to the
21 integrity of the approved plan. Under such circumstances, the Court will deny plaintiff's
22 alternative request, without prejudice to plaintiff's seeking such relief from the Bankruptcy
23 Court.¹

24
25
26 ¹In the event plaintiff obtains permission to borrow such funds, and plaintiff elects to
27 post a supersedeas bond in the amount of the judgments rather than to pay the judgments,
28 plaintiff may renew its request for a stay before this Court. Any such renewed motion is to
be accompanied by a proposed form of bond.

CONCLUSION

For the reasons stated above, plaintiff's motion is hereby DENIED.

IT IS SO ORDERED.

Dated: July 1, 2005

/s/ Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge